

Management Agreement

This MANAGEMENT AGREEMENT ("Agreement") is made and entered into as of January 1, 2018 (the "Effective Date") by and between the City of Council Bluffs, Iowa, an Iowa municipality(hereinafter referred to as "Owner"), and Landscapes Management Company, LLC a Nebraska limited liability company (hereinafter referred to as "Manager").

Recitals

A. Owner desires to provide for the operation and management of the clubhouse, golf course, cart facility, maintenance building and appurtenances, and any other golf course or golf-related facility owned by Owner and situated on the real property located at 2 Harrahs Boulevard, Council Bluffs, Iowa 51501, commonly known as Dodge Riverside Golf Course (collectively referred to as the "Course").

B. Manager is in the business of operating and managing golf courses and has experience and expertise related to golf course operation and management.

C. Owner desires to retain Manager to manage and operate the Course on behalf of Owner pursuant to the terms and conditions of this Agreement.

Agreement

The parties agree as follows:

1. Term of Agreement.

a. Term. The term of this Agreement will begin on the Effective Date and terminate on December 31, 2022 (the "Term"), unless sooner terminated according to the terms and provisions hereof or extended by mutual written agreement of the parties.

b. Early Termination. Owner and Manager shall each have the right to terminate this Agreement, without cause and without penalty, beginning on January 1, 2021. If either party elects to exercise the termination option provided by this section, the party exercising such right shall provide the other party with written notice no less than sixty (60) days' prior to the effective date of termination. The parties shall then follow the procedures set forth in Section 9 hereof.

2. **Services to be Performed by Manager.** During the Term of this Agreement, Manager will supervise, manage, direct and operate the Course, which will include, but not be limited to, collecting and disbursing all monies, negotiating and managing leases and contracts, employing all employees, promoting and managing the Course, purchasing and selling food, beverages, merchandise, supplies and services, purchasing and maintaining insurance coverage on behalf of the Course, handling disputes with third parties, collecting and paying all appropriate taxes and performing all other day-to-day activities relative to the Course. With respect to the operation of the Course, the parties hereto agree as follows:

a. Owner Authorization. Owner hereby grants and delegates to Manager the authority and the responsibility necessary to permit Manager to perform its duties under this Agreement and to do any and all acts deemed necessary or desirable for operation and maintenance of the Course and agrees to take such additional steps as are necessary to evidence such delegation and authorization as is reasonably requested by Manager. Owner hereby grants to Manager the use and occupancy of the Course during the Term of this Agreement or any renewal hereof for said purposes. Owner will not grant to any third party any rights to use or occupancy of all or any part of the Course during the Term of this Agreement without Manager's prior written consent.

b. Major Decisions. Manager will submit proposals to Owner for major expenditures, improvements or events that impact the Course ("Major Policy Decisions"), including, but not limited to, capital improvements and expenditures and the Annual Budgets (as defined in Subsection 2.c below). Manager will secure Owner's prior approval of all Major Policy Decisions. Manager will, to the best of its ability, operate the Course in accordance with the Major Policy Decisions approved by Owner.

c. Annual Budgets.

(1) Not later than December ~~31~~^{15th} of each calendar year during the Term of this Agreement or any renewal hereof, Manager will submit a written business plan and a proposed operating budget (the "Proposed Annual Budget") to Owner for the upcoming ~~calendar-fiscal~~ year running from July 1 to June 30 of the applicable year, except for the first year of this Agreement Manager will submit the Proposed Annual Budget to the Owner ~~within sixty (60) days following the Effective Date~~ on or before February 15, 2018 for the eighteen month period running from January 1, 2018 to June 30, 2019. The Proposed Annual Budget will specify the amount of working capital required to continue operations of the Course for the upcoming calendar year in light of all Major Policy Decisions; the recommended rates for green and cart fees; all anticipated expenses required to maintain a reasonable level of services, equipment, supplies and inventory; and all projected expenses for long term capital improvements and equipment. Owner acknowledges and agrees that all budgets are based solely on Manager's judgment and the facts and circumstances known by Manager at the time of preparation and Manager does not warrant or guarantee the results of operations or performance set forth in any budgets prepared for the Course.

(2) Owner must approve or reject the Proposed Annual Budget ~~within fifteen (15) days of its receipt by Owner~~ on or before March 15 of each calendar year. Owner's failure to reject the Proposed Annual Budget within such time period will be deemed an acceptance by Owner of the Proposed Annual Budget as submitted by Manager. The Proposed Annual Budget, once approved (or deemed approved) by Owner, will be referred to as the "Annual Budget." In the event Owner and Manager cannot agree on a Proposed Annual Budget, Manager will be entitled to continue operation of the Course in accordance with the Annual Budget for the prior year, subject to increases in Expenses required due to matters beyond the control of Manager, until such time as the new Proposed Annual Budget is approved by Owner.

d. Promotion of Golf Activities. Manager will coordinate and direct all work done in the promotion, advertisement and public relations with respect to the Course. Manager will coordinate the creation or modification of graphics, logos and other visual materials for letterheads, envelopes, temporary and permanent signs, brochures, websites, information profiles, progress reports, press releases and bulletins. Manager may indicate on the premises and on such promotional, advertising and public relations materials that the Course is being managed by Manager.

e. Course Personnel. Manager will, in its sole discretion and at the expense of the Owner, employ the Course personnel. Such personnel will include on-site management personnel, staff, and others deemed by Manager to be appropriate for the efficient operation of the Course. Such personnel will be hired, employed, evaluated, promoted and terminated by Manager, except that Manager may, in its sole discretion, elect to have some routine or specialty functions performed by independent contractors and engage such contractors for that purpose as an Expense of the Course.

f. Food, Beverage and Merchandise. Owner will permit the sale of beer, wine and liquor at the Course. Manager will cause the general manager of the Course to apply for and obtain necessary city, county and/or state liquor licenses, as applicable, and all other permits, licenses and approvals required for operation of the Course. It is understood that Manager cannot guarantee factors outside of its control that may prohibit the timely issuance of the liquor licenses or other licenses, permits or approvals. Owner and Manager will cooperate with the general manager in obtaining such licenses, permits and approvals, and if required by applicable city, county or state law, Owner will hold such licenses, permits and approvals in accordance therewith. In addition, Manager will purchase and sell such other food, beverage and merchandise at the Course for such prices as Manager deems prudent.

g. Maintenance Responsibilities. The parties shall have the maintenance responsibilities set forth in Exhibit I – Grounds Maintenance, Exhibit II – Facility Maintenance, and Exhibit III – Fleet Equipment Maintenance, which exhibits are attached hereto and incorporated herein. Either party's failure to perform the responsibilities as assigned therein may be considered a Default and dealt with as provided in this Agreement. The costs of parts for the repair and maintenance of the fleet equipment shall be recognized as an Operating Expense (defined below), whether paid by Manager from Course Accounts or paid directly by the Owner from another account.

3. **Revenues; Expenses; Reserves.** During the Term of this Agreement or any renewal hereof, Manager will cause all Revenues and Approved Reserves to be deposited and held in the Course Accounts (as hereafter defined) and will pay Expenses out of the Course Accounts.

a. Revenues. "Revenues" means all revenues and receipts of any nature derived directly or indirectly from the Course or from the use or operation thereof, including Operating Revenues and Other Revenues. "Operating Revenues" is defined as revenue from green fees; cart rentals; range fees; membership dues, fees and assessments (but excluding capital improvement fees); membership passes; food, beverage and merchandise sales; rebates; purchase

discounts; rentals; and lesson fees (unless such fees are paid directly to the professional providing such lessons in accordance with the agreement between Manager and such professional). "Other Revenues" is defined as proceeds from the sale of assets; capital improvement fees; interest income; Advances (defined below); insurance proceeds; and any other revenue or receipts not included in Operating Revenues.

b. Expenses. "Expenses" means all expenditures or disbursements made or expenses incurred in connection with operation of or for the benefit of the Course, including Operating Expenses and Other Expenses. "Operating Expenses" is defined as payroll and all other employee-related expenses; taxes; governmental fees and charges; utilities; food, beverage and merchandise cost of goods; maintenance expenses; repair costs (excluding capital repairs); supplies; inventory; insurance premiums and deductibles; marketing and advertising materials and expenses; licenses and permits; dues and subscriptions; finance charges; operating leases; professional fees; vendor and independent contractor invoices; Management Fees (defined below); and Manager's travel and other out-of-pocket expenses directly related to operation of the Course. "Other Expenses" is defined as debt payments (principal and interest); capital leases; financing or refinancing costs; capital expenditures (including Approved Capital Expenditures); and any other expenditures or disbursements not included in Operating Expenses. Expenses will not include salaries and other compensation of executive officers and corporate staff of the Manager or Manager's company overhead.

c. Approved Capital Expenditures. "Approved Capital Expenditures" means all expenditures for equipment, furniture, fixtures, Course improvements, and other capital items approved by Owner, which approval may be included in an Annual Budget or other separate form of approval. In the event of an emergency, Manager is also authorized to make an otherwise unapproved capital expenditure in order to prevent loss or damage. Manager will notify Owner immediately of such expenditure.

d. Approved Reserves. "Approved Reserves" means the amount of cash approved by Owner to be held by Manager in the Course Accounts for future operation of the Course, but in no event will the amount be less than Fifty Thousand Dollars (\$50,000).

4. **Advances from Owner.** If, at any time prior to the effective date of termination or expiration of this Agreement, the Revenues from the operation of the Course are not sufficient to pay the Expenses as they become due, Owner must immediately advance to the Course Accounts the amount of cash necessary to meet such obligations (such amount being referred to as an "Advance"). Owner acknowledges that Manager will not be obligated to advance any of its own funds to, or for the account of, the Owner or incur any liability, unless the Owner has furnished Manager with funds necessary for the full discharge thereof.

5. **Accounts.** Manager will maintain one or more separate accounts in the name of Owner (collectively referred to as "Course Accounts") at one or more commercial banks. The Course Accounts shall be the property of Owner and Owner shall have full access to the Course Accounts for audit purposes. Owner agrees that individuals designated by Manager and approved by Owner will be signatories on the Course Accounts and that Owner will not change the signatories of the Course Accounts or close the Course Accounts without the prior written consent

of Manager. All Revenues and Approved Reserves will be deposited by Manager and held in the Course Accounts, and Manager will pay Expenses from Course Accounts. Manager will account to Owner for Course Accounts in accordance with this Agreement. Manager will not commingle Revenues and Approved Reserves with other money or accounts, and will not take any money or property from the Course Accounts or from the Course except to pay Expenses as set forth in this Agreement. Manager will not purchase goods or services from an entity affiliated with Manager unless such purchase is on terms reasonably competitive with terms available from non-affiliated sources.

6. **Management Fees.** In exchange for services rendered by Manager under this Agreement, Manager will be paid from Course Accounts: (a) all Expenses paid by Manager from Manager's accounts and not Course Accounts in connection with the operation of the Course; (b) a Base Management Fee; and (c) a Contingent Management Fee. If, on any date, the Course Accounts contain insufficient funds to pay Manager the foregoing amounts owing, the Owner must immediately make an Advance to cover the shortfall. If Owner fails to make such Advance prior to the date any such amounts are owing to Manager, the amount owed to Manager will bear interest at the rate of one percent (1%) per month until paid in full.

a. **Base Management Fee.** The "Base Management Fee" will be a fixed rate of Five Thousand Dollars (\$5,000) per month, as it may be adjusted, due and payable on the first day of each month of the Term and any renewal hereof. Beginning on January 1, 2019 and on January 1st of each year thereafter, the Base Management Fee will increase by three percent (3%) per year.

b. **Contingent Management Fee.** A Contingent Management Fee will accrue and be payable to Manager no later than 45 days following the end of each ~~calendar~~ fiscal year during the Term. The "Contingent Management Fee" is defined as twenty percent (20%) of any Net Operating Income over \$0. For purposes hereof, "Net Operating Income" is defined as Operating Revenues minus Operating Expenses.

7. **Accounting.** Manager will maintain books and records relating to the business activities of the Course in accordance with generally accepted accounting principles and separate from its other books and records. Manager will prepare an opening balance sheet listing assets and liabilities used or incurred in the operation of the Course. Thereafter, Manager will have monthly financial statements prepared which will include unaudited balance sheets and income statements (each month's records will be referred to separately as the "Monthly Financial Statements") prepared as if the operation of the Course is a business entity separate from Manager and Owner. Manager will deliver a copy of the preceding month's Monthly Financial Statements within ~~thirty~~ twenty five (2530) days after the end of that month, except where circumstances beyond the reasonable control of Manager delay delivery of such statements. In addition, Manager will deliver to Owner, not later than ~~March-September~~ 1st of each calendar year during the Term of this Agreement or any renewal thereof, a copy of year-end financial statements for the Course for the preceding ~~calendar~~ fiscal year. At any time during the Term of this Agreement, upon five (5) business days advanced notice and during normal business hours of operation, and for twelve (12) months after the Term of this Agreement, Owner will be entitled to inspect the books and records of the Course, and Owner may conduct an audit of the Course, all Monthly Financial Statements and all annual financial statements, provided that any expense incurred by Owner in conducting an

inspection or audit will be borne by Owner. The accounting services to be provided by Manager under this Agreement do not include preparation of state or federal income tax filings or audited financial statements, but Manager will provide the balance sheets, income statements and depreciation schedules necessary for a third party to prepare income tax filings. Further, Manager will prepare sales and use tax returns and personal property tax returns for the Course.

8. Default.

a. Events of Default. Any one or more of the following events will, unless cured within the specified cure period, constitute an event of default of this Agreement (“Default”):

(1) Either party’s failure to timely pay any sums payable pursuant to this Agreement when and as the same become due, including Owner’s failure to timely make Advances as required by Section 4, which non-payment remains uncured for a period of five (5) days after written notice thereof from the other party to the defaulting party;

(2) A discontinuance by either party of its business, filing of a bankruptcy petition, or any other action relating to the insolvency of either party; or

(3) A material breach of any material term or provision of this Agreement by either party, which remains uncured sixty (60) days after written notice thereof from the other party to the defaulting party or such longer period of time as may be reasonably required to cure such breach, provided that the defaulting party promptly commences to remedy such breach within the sixty (60) day cure period and thereafter continues diligently to complete such cure.

b. Owner’s Remedies. In the event of a Default by Manager, Owner may terminate this Agreement upon expiration of the specified cure period by delivering to Manager written notice of its election to terminate the Agreement, provided that Manager has not timely cured the Default. In such event, Owner will pay Manager all amounts owed to Manager prior to submitting written notification of termination.

c. Manager’s Remedies. In the event of Default by Owner, Manager may terminate this Agreement upon expiration of the specified cure period by delivering to Owner written notice of its election to terminate the Agreement. In such event, Owner will pay to Manager an amount equal to the total unpaid Management Fees that Manager would have earned had the Agreement remained in effect until the end of the Term.

d. Remedies Not Exclusive. No remedy granted to Owner or Manager is intended to be exclusive of any other remedy provided herein or by law, but each will be cumulative and will be in addition to every other remedy given herein or existing at law or in equity, subject to Section 23 below.

9. Termination or Expiration of Agreement. Upon termination or expiration of this Agreement, the parties will take the following actions no later than the effective date of such termination or expiration:

a. Transfer of Course and Property. Manager will vacate and surrender the Course to Owner and transfer to Owner possession of all property belonging to the Course or Owner, including, but not limited to, cash in the Course Accounts; accounts receivable and other receivables; inventories of merchandise, food, beverages and supplies; equipment, furniture and fixtures; prepaid accounts and deposits; contract rights; trade names; licenses and permits; and Course books and records (collectively, the "Property").

b. Liabilities to be Assumed. Owner will assume and agree in writing to indemnify Manager against all obligations and liabilities relating to the Course, other than contingent tort liabilities which result from the intentional wrongdoing or gross negligence of Manager. Liabilities which Owner assumes, or against which Owner must indemnify Manager, will include all debts and other contractual obligations arising out of the operation of the Course.

c. Payment. All sums owed by either party to the other pursuant to this Agreement will be paid within ~~ten-thirty~~ (130) days of the effective date of termination or expiration of this Agreement.

d. Employees. Unless specifically agreed to in writing by Manager, for a period of one (1) year after termination of this Agreement, Owner hereby agrees, warrants and represents that Owner will not employ any general manager, golf professional, golf course superintendent, or food and beverage manager who was employed by Manager as an employee of the Course at any time during the Term of this Agreement, unless such employee was a current employee of the Course immediately prior to the Effective Date.

e. Survivability. The provisions of this Section 9 will survive the termination or expiration of this Agreement.

10. **Indemnity.**

a. Obligations of the Course. All obligations and costs to defend all disputed claims arising out of or resulting from Manager's activities conducted in connection with or incidental to this Agreement will be paid as an Expense of the Course. Manager will keep Owner advised of any such matters.

b. Indemnification by Manager. Manager will indemnify, hold harmless and defend Owner, its members, managers, officers, directors, agents, authorized representatives and employees, from and against all liability for any and all claims, liens, suits, fines, losses, demands or actions for damages, injuries (including death) to persons, property damage (including loss of use), and expenses, including court costs and reasonable attorneys' fees and other reasonable costs, arising out of or resulting from the breach of any representation or warranty by Manager, or from Manager's intentional misconduct or gross negligence in operating the Course.

c. Indemnification by Owner. Owner will indemnify, hold harmless and defend Manager, its members, managers, officers, agents, authorized agents, and employees, from and against all liabilities for any and all claims, liens, suits, fines, losses, demands or actions for

damages, injuries (including death) to persons, property damage (including loss of use), and expenses, including court costs and attorneys' and consultants' fees and other reasonable costs, arising out of, involving, or resulting from the operation of the Course by Manager (excluding intentional malfeasance or gross negligence by Manager), the breach of any representation or warranty by Owner, any act, omission or neglect of Owner, its agents, contractors, employees or invitees, or a Default by Owner, or arising out of, involving, or resulting from all liabilities and obligations transferred, assumed or to be assumed by Owner in accordance with Section 9 of this Agreement.

d. Limitation of Liability. Notwithstanding anything contained herein to the contrary, the liability of Manager hereunder will be limited to the amount of Management Fees paid hereunder, and in no event will any other assets of Manager or any constituent member or other affiliate of Manager be subject to any claim arising out of or in connection with this Agreement.

e. Notice of Claims. Manager and Owner will provide each other with prompt written notice of any event covered by the indemnity provisions of this Agreement and in the event a claim or action is filed, each party may employ attorneys of its own choosing to appear and defend the claim or action on its behalf. Failure to provide such notice, however, will not limit any party's indemnity obligations hereunder.

11. **Insurance.** As an Expense of the Course, Manager will obtain insurance of the types and in the amounts set forth below from an underwriter(s) licensed to do business in the state in which the Course is located. Manager will furnish certificates of insurance to Owner evidencing the required insurance on or before the Effective Date or the Insurance Coverage Date (defined below), as applicable, and thereafter will furnish new certificates upon request.

a. Type and Amount of Insurance. The type and minimum amount of insurance to be obtained by Manager in the name of and/or on behalf of the Course will be:

(1) Worker's Compensation in the minimum amount required by law and Employer's Liability with limits not less than \$100,000/\$500,000/\$100,000, with a waiver of subrogation in favor of Owner and the policy endorsed to name Owner as an alternate employer.

(2) Commercial General Liability to include coverage for the following: (a) Premises/Operations; (b) Independent Contractors; (c) Personal Injury; (d) Liquor Liability; and (e) Products/Completed Operations. Such coverage must be maintained in an amount not less than \$1,000,000 per occurrence and \$2,000,000 aggregate. Manager and Owner will be named as ~~an~~-additional insureds on a primary and non-contributory basis, and the policy will have a waiver of subrogation in favor of Manager and Owner.

(3) Crime/Employee Dishonesty Insurance covering all employees and officers having access to money collected in an amount sufficient to protect against loss of the largest dollar amount in the control or possession of an employee at any given time, but in no event less than \$25,000 per occurrence.

(4) Property Insurance on special form, replacement cost and agreed amount basis on all real and personal property and contractors and maintenance equipment. Such coverage will also include equipment breakdown, including spoilage.

(5) Comprehensive Automobile Liability to include coverage for the following: (a) Owned/Leased Automobiles; (b) Non-owned Automobiles; and (c) Hired Cars. Such coverage must be maintained in an amount not less than \$1,000,000 combined single limit for bodily injury and property damage, with Manager and Owner named as ~~an~~ additional insureds.

(6) Commercial Umbrella Liability with no less than \$5,000,000 limit.

b. Additional Insurance Requirements. With respect to the above-described insurance, the policies shall provide for thirty (30) days' written notice of any material change, termination or cancellation to Owner. Further, the policies procured in the name of and/or on behalf of the Course will provide primary and non-contributory coverage for all losses and damages covered thereby.

c. Insurance Coverage Date. Manager's obligation to procure the insurance coverages required by Sections 11.a.(2), a.(4), a.(5) and a.(6) shall not become effective until the later of the following to occur: (i) 30 days following the Effective Date, or (ii) within 21 days following Manager's receipt from Owner of all information reasonably requested by Manager related to the Course's insurance coverage and loss history prior to the Effective Date (the "Insurance Coverage Date"). Prior to the Insurance Coverage Date, Owner will be responsible for providing the coverages required by Sections 11.a.(2), a.(4), a.(5) and a.(6), and Manager shall have no obligation to ensure the adequacy of such coverage.

12. **Covenant of Cooperation.** Manager will provide Owner with prompt written notice of any material damage, loss or injuries suffered at the Course, significant complaints, whether written or otherwise, about the Course or its management, and actual or anticipated disputes with or claims by third parties, including, but not limited to, adjacent landowners. Manager further covenants to cooperate with Owner in resolving any such complaints, disputes or claims and Owner covenants to cooperate with Manager in resolving any such complaints, disputes or claims.

13. **Owner's Representations and Warranties.** To induce Manager to enter into this Agreement, Owner makes the following representations and warranties to Manager:

a. Each of the Recitals set forth in this Agreement is true and correct.

b. Owner has power and authority and all legal rights to enter into and perform this Agreement. The members, managers, directors or officers of Owner executing this Agreement are duly and properly and fully authorized to execute the Agreement. This Agreement, when duly

authorized, executed and delivered by the parties hereto, will create a valid and binding obligation on the part of Owner, enforceable against Owner in accordance with its terms.

c. Except as previously disclosed in writing to Manager, there are no actions, suits or proceedings pending or, to the knowledge of Owner, threatened against Owner or affecting Owner, the Course or any of Owner's assets, properties or rights, at law or in equity, by or before any court, arbitrator, administrative or governmental body or other person. Except as previously disclosed in writing to Manager, Owner is not in violation or default with respect to any applicable law or regulation which affects the Course or the condition (financial or otherwise) of the Owner and the Course fully complies with all applicable federal, state and local laws, ordinances, regulations, orders and directives.

d. Except as provided herein, Owner has not granted to any person or entity not a party to this Agreement any rights of use or occupancy of the Course, or any part or portion thereof, including but not limited to any leasehold rights or interests.

e. The Course is adequate and in sufficiently good condition for Manager to operate a golf course, pro shop, clubhouse and other services contemplated by the terms of this Agreement. The Course has all water and utility hook-ups necessary to operate the golf course, pro shop, clubhouse and other services contemplated by the terms of this Agreement.

14. Manager's Representations and Warranties. To induce Owner to enter into this Agreement, Manager makes the following representations and warranties to Owner:

a. Each of the Recitals set forth in this Agreement is true and correct.

b. Manager is a duly organized and validly existing limited liability company in good standing under the laws of the State of Nebraska and is duly qualified to do business in the state in which the Course is located.

c. Manager has the full power and authority and all legal rights to enter into and perform this Agreement and any other agreement referred to herein and contemplated by this Agreement. This Agreement, when duly authorized, executed and delivered by the parties hereto, will create a valid and binding obligation on the part of Manager, enforceable against Manager in accordance with its terms.

15. Environmental Indemnity. Owner agrees to indemnify, defend and hold harmless Manager from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, any and all sums paid for settlement of claims, attorneys' fees, consultant and expert fees) arising during or after the Term of this Agreement or in connection with the presence or suspected presence of Hazardous Substance (as defined below) in or on the Course, unless the Hazardous Substance is present solely as the result of the gross negligence or willful misconduct of Manager or Manager's employees. Without limitation of the foregoing, this indemnification will include any and all costs incurred between investigation of the site through the time of completion of any clean-up, removal or restoration mandated by a federal, state or local agency or political subdivision, unless the Hazardous Substance is present solely as a result of the

gross negligence or willful misconduct of Manager or Manager's employees. This indemnification will specifically include any and all costs due to Hazardous Substance which flows, diffuses, migrates or percolates into, onto or under the Course after the Agreement Term commences. As used herein, "Hazardous Substance" means any substance which is toxic, ignitable, reactive or corrosive and/or which is regulated by any local government, the state in which the Course is located or the United States Government. "Hazardous Substance" includes any and all material or substances which are defined as "hazardous waste," "extremely hazardous waste," or "hazardous substance," pursuant to state, federal or local governmental law and includes, but is not limited to, asbestos, radon, PCBs and petroleum and petroleum-containing products. This provision will survive the termination of this Agreement.

16. **Relationship of the Parties.** The relationship between Owner and Manager will be and at all times remains that of owner and independent contractor, respectively. Neither Owner nor Manager will be construed or held to be a partner, limited partner, associate or agent of the other, or be joint venturers with one another. Neither Owner nor Manager will be authorized by the other to contract any debt, liability or obligation for or on behalf of the other except as specifically provided for herein.

17. **Notices.** Except as otherwise specifically provided herein, any and all notices required or permitted under this Agreement must be in writing and will be deemed delivered upon personal delivery or upon mailing thereof when properly addressed and deposited in the United State Mail, first class postage prepaid, registered or certified mail, return receipt requested, or when properly addressed upon deposit with Federal Express, Express Mail or other trackable overnight courier service. Notices will be properly addressed if addressed to the parties as follows:

If to Owner:

City Hall
Attention: Director of Parks and Recreation
209 Pearl Street
Council Bluffs, IA 51503

If to Manager:

Landscapes Management Company, LLC
Attn: Tom Everett, Manager
1201 Aries Drive
Lincoln, NE 68512

The addresses for notices may be changed by written notice given to the other party as provided above.

18. **Further Acts.** Each party to this Agreement agrees to execute and deliver all documents and instruments and to perform all further acts and to take any and all further steps that may be reasonably necessary to carry out the provisions of this Agreement and the transactions contemplated herein.

19. **Section Headings.** The various section, subsection, paragraph, subparagraph and clause headings in this Agreement are for convenience and reference only and in no way define, limit, extend or interpret the scope or interpretation of this Agreement or of any particular section, subsection, paragraph, subparagraph and clause contained herein.

20. **Interpretation.** Unless the context requires otherwise, words used in the singular number include the plural and vice-versa.

21. **Amendments and Waivers.** This Agreement can be modified only by written instrument executed by the parties hereto. Any waiver of any provision of this Agreement must be made in writing executed by the party who could demand fulfillment of such waived provision.

22. **Dispute Resolution.**

a. Owner and Manager are fully committed to working with each other so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Owner and Manager will first attempt to resolve such disputes or disagreements through discussions between senior representatives of Owner and Manager. Upon the request of either party, such representatives will meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the senior representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

b. If a meeting between the senior representatives does not result in a resolution satisfactory to both parties, Owner and Manager agree that such claim, controversy or dispute arising out of this Agreement will be submitted to arbitration. If either party wishes to commence arbitration, it must serve written notice to the other party and, within fifteen (15) days after service, the parties will mutually select a single arbitrator to conduct such arbitration. Any decision by the arbitrator will be final and binding upon the parties. Any arbitration will be conducted in accordance with the commercial arbitration rules of the American Arbitration Association then in effect, except that each party will have the right to conduct pre-arbitration discovery limited to three (3) depositions and one (1) request for documents. The arbitrator will determine all discovery disputes. Costs and expenses, including reasonable attorneys' fees, incurred with respect to the arbitration will be borne by the losing party, unless otherwise determined by the arbitrator based on a showing of good cause.

23. **Waiver of Consequential Damages.** Notwithstanding anything herein to the contrary, neither Owner nor Manager will be liable to the other for any special, consequential or exemplary damages or losses of any kind, whether arising in contract, warranty, tort (including negligence), strict liability or otherwise, including, but not limited to, losses of use, profits, business, reputation, or financing.

24. **Assignment.** Neither party can assign this Agreement or its rights, duties and obligations hereunder without the prior written consent of the other party, which consent must not be unreasonably withheld.

25. **Successors and Assigns.** This Agreement is binding upon and will inure to the benefit of the parties hereto and their respective permitted successors and assigns.

26. **Governing Law.** This Agreement will be construed under and in accordance with the laws of the State of Iowa.

27. **Counterparts.** This Agreement and all amendments and supplements to it may be executed in counterparts and all such counterparts will constitute one agreement binding on both of the parties.

28. **Severability.** Should one or more of the provisions of this Agreement be determined to be illegal or unenforceable, the other provisions nonetheless will remain in full force and effect. The illegal or unenforceable provision or provisions will be deemed amended to conform to applicable laws so as to be valid and enforceable if such an amendment would not materially alter the intention of the parties.

29. **Entire Agreement.** This Agreement (together with any attached exhibits) constitutes the entire agreement between the parties concerning the subject matter of this Agreement, and supersedes all prior agreements, arrangements, understandings, restrictions, representations or warranties, whether oral or written, between the parties relating to the subject matter of this Agreement.

30. **Outside Businesses.** Nothing contained in this Agreement will be construed to restrict or prevent, in any manner, any party or any party's affiliates, parent companies, or representatives or principals from engaging in any other businesses or investments, nor will Owner or Manager have any right to share or participate in any such other businesses or investments.

31. **Approvals.** Any consent or approval referred to herein (by whatever words used) of either party must not be unreasonably withheld, delayed or conditioned, and neither party may seek or obtain any payment as a condition therefor. Except as otherwise expressly provided herein, whenever either party has called upon the other to execute and deliver a consent or approval in accordance with the terms of this Agreement, the failure of such party to respond to the demand within fifteen (15) days after written request therefor given in accordance with this Agreement, or such other period as specifically set forth herein, will be deemed to be a consent or approval. In the event that either party refuses to give its consent or approval to any request by the other, such refusing party must indicate by written notice to the other the reason for such refusal.

32. **No Third-Party Beneficiaries.** Nothing herein contained will be deemed to establish any rights of third parties against the parties hereto, it being the intent that the rights and obligations set forth herein are those of the parties hereto alone, with no third party beneficiary rights intended.

33. **Survival.** All covenants, agreements, representations, and warranties made herein will survive the execution and delivery of (i) this Agreement, and (ii) all other documents

and instruments to be executed and delivered in accordance herewith, and will continue in full force and effect during the Term of this Agreement.

34. **Force Majeure.** The provisions of this Section 34 will be applicable if there occurs during the Term any (i) strikes, lockouts, or labor disputes, (ii) inability to obtain materials or reasonable substitutes therefore, (iii) acts of God, governmental restrictions, regulations, or controls, enemy or hostile governmental action, civil commotion, fire, or other casualty, or (iv) other conditions similar to those enumerated in this section beyond the reasonable control of the party obligated to perform. If either party, as a result of any of the above-described events, fails punctually to perform any obligation on its part to be performed under this Agreement (an "Unavoidable Delay"), then, upon written notice to the other, within thirty (30) days of such Unavoidable Delay, such failure will be excused and not be a breach of this Agreement by the party claiming the Unavoidable Delay, but only to the extent occasioned by such Unavoidable Delay. If any right or option of either party to take any action under or with respect to the Term is conditioned upon the same being exercised within any prescribed period of time or at or before a named date, then such prescribed period of time or such named date will be deemed to be extended or delayed, as the case may be, upon written notice, as provided above, for a time equal to the period of the Unavoidable Delay. Notwithstanding anything contained herein to the contrary, the provisions of this section will not be applicable to either party's obligation to pay any sums, monies, costs, charges, or expenses required to be paid pursuant to the terms of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date set forth above.

CITY OF COUNCIL BLUFFS, IOWA,
an Iowa municipality

By: _____
Its Duly Authorized Representative

LANDSCAPES MANAGEMENT COMPANY,
LLC, a Nebraska limited liability company

By: _____
Tom Everett, Manager

Exhibit I – Grounds Maintenance

Section 1 - Golf Course Condition Assessment

The City and the Manager recognize the importance of quality maintenance of the Golf Course. The process hereinafter described provides a pro-active approach to insure maintenance of the course remains at an acceptable level. This approach envisions the City and the Manager working together to assess course conditions, evaluate options should deficiencies be discovered and arrive at solutions in a timely fashion.

A. Inspection

- a. A Course Condition Committee composed of one City staff member, the Course Superintendent, the Course General Manager and or Landscapes Management Company Director of Agronomy, and a ~~fourth~~^{third} person mutually agreeable to the City and the Manager shall be formed for the sole purpose of conducting the activities as ~~outline~~^{outlined} herein.
- b. This Committee shall establish ~~monthly~~^{bi-monthly} inspection meetings during the season. These meetings will take place in April, June, August and October of each year of this agreement. ~~Monthly~~^{Meeting} dates may be altered due to weather, course activities or at the agreement of the City and Manager representatives.
- c. During this meeting, the Committee will inspect some or all of the course for purposes of ensuring the Manager's compliance with the course maintenance guidelines and identifying any features, items or course elements needing attention. Special attention may be given to any course problem areas that may have developed or been reported.
- d. In conducting such inspection and evaluation, the City representative shall complete applicable portions of the Golf Course Operations and Maintenance Standards Form. In completing this form, the City Representative shall consider input and recommendations from the other Committee Members.
- e. The City Representative shall operate in good faith and reasonability in completing the form, recognizing weather conditions, impacts not within the control of the Manager and the viability of potential options for addressing the deficiency.
- f. The City Representative shall furnish the other Committee members with a copy of the final Operations and Maintenance Form. Each member may note any comments or concerns and provide their forms to the City Representative.

B. Addressing Deficiencies

- a. Within one week following the inspection, the City's representative and the Course Superintendent shall meet to review any deficient items. At that time, the Superintendent shall detail the action to be taken to correct the deficiency and the

time schedule for completion of the corrective action. Upon the City Representative's agreement to the action/timeframe, the Superintendent shall notify them upon completion.

- b. In determining how to address deficiencies, and the timetable for doing so, weather, seasonal conditions, ongoing course work activities, course play, events and other items shall be taken into consideration.

C. Exclusions: The following items, if identified as deficient, shall be excluded from being addressed by the Superintendent:

- a. Any deficiency requiring correction that is considered a Capital Improvement.
- b. Any deficiency that the Superintendent is unable to correct due to the City's inability to provide sufficient funds.

Section 2 - Minimum Maintenance Standards for Peak Season Operations

Putting Greens

Key Characteristics: Full density. Uniform cover. Firm, but not hard. Smooth surface. True ball roll. Weed, insect, and disease free. Straight mowing lines and defined perimeters. USGA Stimpmeter reading range from 8.0 to 10.0.

Mowing Equipment. Triplex mowing. Walk mowers, if available, will be used occasionally if any greens are challenged with poor conditions. Clippings collected.

Mowing Frequency. 6 to 7 days per week. Direction is rotated to assist with grain accumulation. Clean-up laps may be skipped to prevent compaction and excess wear and tear on green edges.

Height of Cut range .125 to .140 inches.

Vertical Mowing/Grooming/Brushing. Performed as necessary to manage thatch accumulation and grain development.

Rolling. Rolling will be utilized as a compliment to the greens mowing maintenance program. Frequency of this operation will be determined on an as needed basis if appropriate equipment is available in the fleet.

Plant nutrition. A mixture of granular and liquid spoon-feeding applications will be utilized. Basic inputs are adjusted to meet monthly environmental conditions.

IPM Application Program. Based on economic and environmental impacts. Key elements of protection are weeds, diseases, and insects.

Sand Topdressing. Maintenance frequency at 7 to 14 day intervals. Heavier applications are made during the aeration operation(s).

Plant Growth Regulation. Applications made during sustained plant growth. Products and rates to be determined on a case by case basis to meet growth and density standards.

Aeration. Process will take place in the Spring and Fall. Type and size of tines to be determined for each operation. If additional applications are necessary, usually a less disruptive practice with mini-tines will take place.

Hole locations. Changed daily. Create playability balance based on conditions.

Ballmark repair. Daily inspection and repairs by mowing and set-up teams.

Collars, Approaches and Tees

Key Characteristics: Full density. Uniform cover. Firm but not hard. Smooth surface. Weed, insect and disease free. Straight mowing lines and defined perimeters.

Mowing Equipment. Triplex mowers. Collect clippings.

Mowing Frequency. 2-3 times per week based on growth rate.

Height of Cut range. .5 to .65 inches.

Vertical Mowing. Performed as necessary to manage thatch accumulation and grain development.

Plant Nutrition. Applications made during sustained plant growth. Products and rates to be determined on a case by case basis to meet growth and density standards.

IPM Application Program. Based on economic and environmental impacts.

Sand Topdressing. Applications at aeration.

Plant Growth Regulation. Applications made during sustained plant growth. Product and rates to be determined on case by case basis to meet growth and density standards.

Aeration. Coring process performed annually. Timing to be determined.

Divot Repair. Performed 3 times per week.

Golf Course Set-Up and Service

Condition and replacement of accessories to be determined. Annual refurbishment to take place.

Trash collection and removal. Performed daily.

Ballwasher service. Performed weekly or as needed.

Traffic Control. Managed daily.

Water Coolers. Managed daily.

Fairways

Key Characteristics. Full density. Uniform cover. Smooth surface. Manageable weed, insect and disease programs.

Mowing Equipment. 5-gang units.

Mowing Frequency. 2-3 times per week based on growth rate.

Height of Cut range. .5 to .65.

Vertical Mowing. Performed as necessary to manage thatch accumulation.

Plant Nutrition. Applications made during sustained plant growth. Products and rates to be determined on a case by case basis to meet growth and density standards.

IPM Application Program. Based on economic and environmental impacts.

Plant Growth Regulation and Wetting Agents. Applications made during sustained plant growth. Products and rates to be determined on case by case basis to meet growth and density standards.

Aeration. Coring process annually.

Divot Repair. Weekly with assistance from players support personnel.

Primary Rough

Key Characteristics. Full density. Uniform cover. Clean and neat presentation. Manageable weed, insect and disease programs.

Mowing Equipment. 5-gang units and deck mowers. Reel units for intermediate rings.

Mowing Frequency. 1-2 times per week based on growth rate.

Height of Cut range. 2.0 to 2.75 inches.

Plant Nutrition. Applications made during sustained plant growth. Products and rates to be determined on a case by case basis to meet growth and density standards.

IPM Application Program. Based on economic and environmental impacts.

Natural Areas

Key Characteristics: Clean. Well defined. Weed and debris free.

Minimal maintenance areas.

Bunkers

Key Characteristics: Clean. Well defined. Weed free. Consistent.

Raking Type. Mechanical equipment.

Raking Frequency. 3 times per week.

Rake Placement and quantity to be determined.

Edging and immediate perimeter mowing. Mowing of perimeters performed weekly. Edging bi-monthly.

Sand depth. Maintain 2 inches on slopes, 4 inches in bottoms.

Drainage and storm repair. Performed as needed.

Practice Areas

To be maintained in a consistent manner with all golf course features.

Soil Sampling and Water Quality Testing

Soil samples are collected for analysis annually in the fall. Two greens, two tees and two fairways from each 9 holes are sampled in the fall. These should remain consistent to establish a good data base and thresholds. Water samples are collected twice annually.

Irrigation

Scheduling. Irrigation events are scheduled to suit the needs of the turfgrass and enhance playability.

Hand watering. Required to target specific needs.

Maintenance and Repairs. Repairs are completed as needed.

Functional and Performance Audits performed annually.

Pumpstations. Inspected daily. Repairs to be made as necessary.

Fleet Management

Preventative maintenance. Performed to keep machinery in proper running order.

Sharp cutting units. Maintained in good order to keep plants healthy.

Maintenance and Repairs performed as needed.

Record keeping for each unit is essential.

Cart Paths

Debris removal. Daily inspection and removal as needed.

Edging. Completed every 60 to 90 days to enhance the aesthetics of the golf course.

Leaf Removal

Seasonal leaf removal. Leafs to be blown or removed from the course playing surfaces as needed.

Pond and Water Features

Pond to be inspected weekly to determine conditions. Water surface to be kept free of trash and unapproved aquatic plants/algae. Surface erosion into pond to be addressed and repaired.

Pond water level to be maintained at prescribed elevations.

Pond edge to be free of weeds and at prescribed height and approved vegetation.

Record Keeping

Irrigation. Daily, weekly, monthly, and annual water usage records are maintained.

Moisture management. Checked and reported daily.

Chemical reports. Maintained for all applications.

Exhibit II

Facilities Maintenance

The following is a guideline on how the City of Council Bluffs ("City") and Landscapes Unlimited Management Company ("Manager") will provide maintenance and repairs of the Dodge Riverside Clubhouse and Dodge Riverside Maintenance Facility.

- I. The City will provide all standard repair/maintenance on all facilities associated with the golf club.

Repair and maintenance could be associated with, but not limited to the following items:

- A. Plumbing, mechanical, electrical fixtures
- B. Kitchen equipment
- C. Civil, structural or architectural feature
- D. Furniture, fixtures and equipment
- E. HVAC equipment

- II. Manager will perform regular/ minimum maintenance on equipment to ensure proper working order. Examples of this maintenance are as follows:

- A. Cleaning/degreasing of the kitchen grease trap and range hood a minimum of four times per year.
- B. Clean all windows as needed, but not less than annually.
- C. Carpets will be shampooed and floors cleaned and waxed on a regular basis, but not less than annually.

- III. Security Systems:

The security systems shall be maintained by the Manager.

- IV. Although all maintenance of the building and City equipment is provided by the City, the Manager shall be responsible to notify the City of needed repairs. Additionally, the Manager shall become familiar with the necessary reporting system and forms used to process City work orders and for submission of these forms to request needed repairs. All maintenance and repairs are to be reported to the City.

- V. Although the City is responsible for maintenance and repairs throughout these facilities and other equipment used by the Manager, the City shall not be responsible for any maintenance and repairs due to the negligence of Manager or any of its employees.

- VI. Any and all alterations to any City owned building, grounds or equipment will require prior consent from City Administration.

Exhibit III

Fleet Equipment Maintenance

I. Equipment Information:

Each piece of equipment ("Equipment") shall be listed separately utilizing the format set forth on the attached Exhibit A. The total number of pieces of Equipment covered by this Equipment Maintenance Agreement ("Agreement") is 44.

Commented [TE1]: Can we see Exhibit A...also, I assume the number of pieces will change over time as pieces are added and deleted?...do we want to be specific about the quantity?

The Equipment is and shall remain the sole property of the City. The City may require markings to be placed on the Equipment. Manager shall keep the Equipment free from any and all encumbrances and liens which may in any way affect the City's right, title or interest in and to the Equipment.

It is expressly understood and agreed that the Equipment is made available to Manager on "AS IS—WHERE IS" basis. City does NOT warrant that the Equipment is either **MERCHANTABLE** or **FIT FOR ANY PARTICULAR PURPOSE**, and the City hereby expressly disclaims all warranties (except as to title) with respect thereto.

II. Manager Responsibilities:

This Agreement and the responsibilities as outlined hereunder are not transferable without the written approval of the City. Manager agrees to comply with the terms set below:

A. ~~Insurance~~

~~The Manager is responsible for the full cost of repair or replacement of any or all of the Equipment that is damaged, lost, confiscated, or stolen from the time the Manager assumes custody until it is returned to the City. If the Equipment is lost, stolen or damaged, Manager agrees to promptly notify the City representative designated above.~~

B. ~~Indemnification~~

~~Manager agrees to defend, indemnify and hold harmless the City from any and all claims, suits, actions, proceedings, losses, costs, expenses (including reasonable attorneys' fees) or liabilities of whatever nature (including without limitations by way of strict liability) arising out of or in any way connected with this Agreement or with Manager's possession, operation or use of the Equipment or from any other cause including the alleged condition of the Equipment or claimed fault or negligence of the City. This indemnity shall specifically cover, but is not limited to, claims alleging liability as a result of damage to property and/or death or bodily injury to any person (including employees of Manager).~~

Commented [TE2]: These matters are already addressed in the overriding agreement.

~~C.~~ B. Regular Maintenance

Commented [TE3]: I couldn't get the letter B to change to A.

Manager shall maintain all Equipment according to Original Equipment Manufacturers (O.E.M.) specifications on a daily basis. This includes, but is not limited to, cleaning, adjustments, blade sharpening, lubrication and inspections. A City daily equipment check sheet shall be provided for each piece of Equipment. Manager shall not subcontract maintenance to an outside source without

the express written consent of the City. Manager must provide monthly hour/mile reports for all Equipment.

D.C. Use/Disclaimer

The Manager shall be responsible for the proper use and deployment of the Equipment. The Manager shall be responsible for training anyone using the Equipment on the proper use of the Equipment in accordance with any Equipment use procedures. Manager should never use any piece of Equipment in a way that is known or suspected to be unsafe.

Any damage by the Manager due to neglect or improper use will be the financial responsibility of the Manager.

Manager shall never use City Equipment for non-work related tasks, or allow non-employees to use the Equipment.

The Manager agrees to comply fully with the Occupational Safety and Health Act of 1970 (OSHA) as amended and any comparable federal and state laws in effect where the contracted work is being carried out, and all safety and work regulations instituted by the City.

E.D. Fuel

Manager shall provide the fuel necessary to operate the Equipment owned by the City and used by the Manager.

F.E. Alterations or Modifications

Manager shall not alter or modify the Equipment in any manner without the written permission of the City or its representative. If alteration or modification is approved, they will become the property of the City.

III. City Responsibility

City will provide periodic ~~repairs for maintenance equipment as needed~~ ~~maintenance~~. This ~~will can~~ include ~~but will not be limited to~~ fluid and filter changes, tire repair, breakdown maintenance ~~requirements~~ ~~repairs~~ will be charged back to the Manager, this expense will be applied to the profit and loss statement for the purpose of determining contingent management fees. ~~All work~~ ~~Repairs~~ performed by the City ~~may will~~ be done at the Fleet Maintenance Facility at the address above ~~or at the Dodge Riverside Maintenance Facility~~. ~~When necessary,~~ ~~if~~ the Manager is responsible for transportation of equipment to and from the ~~Manager's location~~ ~~Dodge Riverside Maintenance Facility~~ to Fleet Maintenance. If the unit is disabled, towing service will be provided by the City. Expenses arising from the towing will be charged back to the Manager.

Commented [TE4]: We absolutely want to take advantage of the resources available in the fleet maintenance department but we need to be able to make adjustments/repairs in the field and not be restricted in the agreement from doing so. Is there an opportunity for fleet maintenance personnel to conduct some repairs at the maintenance facility as it seems extremely inefficient to move the equipment back and forth. Transportation to fleet maintenance seems appro

Commented [TE5]: No address is listed.

Commented [TE6]: Is the proper equipment available for use to be able to transport equipment back and forth?